

1-1 By: Patrick (Senate Sponsor - Hancock) H.B. No. 1755
1-2 (In the Senate - Received from the House May 9, 2013;
1-3 May 9, 2013, read first time and referred to Committee on
1-4 Jurisprudence; May 20, 2013, reported favorably by the following
1-5 vote: Yeas 4, Nays 0; May 20, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 West	X			
1-8 Rodriguez	X			
1-9 Campbell			X	
1-10 Carona	X			
1-11 Garcia			X	
1-12 Hancock	X			
1-13 Paxton			X	

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to authorizing the appointment of a public probate
1-18 administrator; authorizing fees.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Subchapter B, Chapter 25, Government Code, is
1-21 amended by adding Section 25.00251 to read as follows:

1-22 Sec. 25.00251. PUBLIC PROBATE ADMINISTRATOR. (a) A
1-23 statutory probate court judge, with the concurrence of the
1-24 commissioners court, may appoint a public probate administrator for
1-25 the county in which the statutory probate court is located. One
1-26 person shall serve as the public probate administrator for all
1-27 statutory probate courts in the county unless the commissioners
1-28 court has authorized additional public probate administrators.

1-29 (b) If a county has more than one statutory probate court,
1-30 the presiding judges of all of the statutory probate courts located
1-31 in the county shall designate, by a majority vote, a specific
1-32 statutory probate court judge to appoint and administer the office
1-33 of the public probate administrator in that county. If the
1-34 statutory probate court judges cannot, by a majority vote,
1-35 determine which statutory probate court judge shall appoint and
1-36 administer the office of the public probate administrator in that
1-37 county, the chief presiding statutory probate court judge shall
1-38 cast the tiebreaking vote to decide which statutory probate court
1-39 judge shall appoint and administer the office of the public probate
1-40 administrator in that county.

1-41 (c) The public probate administrator may be a person, a
1-42 charitable organization, or any other suitable entity.

1-43 (d) The commissioners court shall set the compensation of
1-44 the public probate administrator.

1-45 (e) The public probate administrator, with the consent of
1-46 and at salaries set by the commissioners court, may employ
1-47 assistants, deputies, clerks, and any other employees as necessary
1-48 to carry out Chapter 455, Estates Code.

1-49 SECTION 2. Subtitle J, Title 2, Estates Code, as effective
1-50 January 1, 2014, is amended by adding Chapter 455 to read as
1-51 follows:

1-52 CHAPTER 455. PUBLIC PROBATE ADMINISTRATOR

1-53 Sec. 455.001. DEFINITION. In this chapter, "public probate
1-54 administrator" means the public probate administrator appointed
1-55 under Section 25.00251, Government Code.

1-56 Sec. 455.002. BOND OF PUBLIC PROBATE ADMINISTRATOR. (a)
1-57 The public probate administrator must execute an official bond of
1-58 at least \$100,000 conditioned as required by law and payable to the
1-59 statutory probate court judge who appointed the public probate
1-60 administrator.

1-61 (b) In addition to the official bond of office, at any time,

for good cause, the statutory probate court judge who appointed the public probate administrator may require the administrator to post an additional corporate surety bond for individual estates. The additional bonds shall bear the written approval of the judge requesting the additional bond.

(c) The county may choose to self-insure the public probate administrator for the minimum bond amount required by this section.

Sec. 455.003. FUNDING OF PUBLIC PROBATE ADMINISTRATOR'S OFFICE. A public probate administrator is entitled to commissions under Subchapter A, Chapter 352, to be paid into the county treasury. The public probate administrator's office, including salaries, is funded, in part, by the commissions.

Sec. 455.004. POWERS AND DUTIES. (a) On receipt of notice of a decedent for whose estate a personal representative has not been appointed and who has no known or suitable next of kin, the public probate administrator shall take prompt possession or control of the decedent's property located in the county that:

(1) is considered by the public probate administrator to be subject to loss, injury, waste, or misappropriation; or

(2) the court orders into the possession and control of the public probate administrator after notice to the public probate administrator.

(b) The public probate administrator is responsible for determining if the decedent has any heirs or a will and, if necessary, shall make burial arrangements with the appropriate county facility in charge of indigent burial if there are no known personal representatives.

(c) If the public probate administrator determines the decedent executed a will, the administrator shall file the will with the county clerk.

(d) The public probate administrator has all of the powers and duties of an administrator under this title.

(e) The public probate administrator may dispose of any unclaimed property by public auction or private sale, or donation to a charity, if appropriate.

(f) The statutory probate court judge or commissioners court may request accountings in addition to accountings otherwise required by this title.

Sec. 455.005. INFORMING PUBLIC PROBATE ADMINISTRATOR. (a) If a public officer or employee knows of a decedent without known or suitable next of kin or knows of property of a decedent that is subject to loss, injury, waste, or misappropriation, the officer or employee may inform the public probate administrator of that fact.

(b) If a person dies in a hospital, mental health facility, or board and care facility without known or suitable next of kin, the person in charge of the hospital or facility may give immediate notice of that fact to the public probate administrator of the county in which the hospital or facility is located.

(c) A funeral director in control of a decedent's remains may notify the public probate administrator if:

(1) none of the persons listed in Section 711.002, Health and Safety Code, can be found after a reasonable inquiry or contacted by reasonable means; or

(2) any of the persons listed in Section 711.002, Health and Safety Code, refuses to act.

Sec. 455.006. PUBLIC PROBATE ADMINISTRATOR'S INITIATION OF ADMINISTRATION. (a) The public probate administrator shall investigate a decedent's estate and circumstances to determine if the opening of an administration is necessary if the public probate administrator has reasonable cause to believe that the decedent found in the county or believed to be domiciled in the county in which the administrator is appointed does not have a personal representative appointed for the decedent's estate.

(b) The public probate administrator shall secure a decedent's estate or resolve any other circumstances related to a decedent, if, after the investigation, the public probate administrator determines that:

(1) the decedent has an estate that may be subject to loss, injury, waste, or misappropriation; or

(2) there are other circumstances relating to the decedent that require action by the public probate administrator.

(c) To establish reasonable cause under Subsection (a), the public probate administrator may require an information letter about the decedent that contains the following:

(1) the name, address, date of birth, and county of residence of the decedent;

(2) a description of the relationship between the interested person and the decedent;

(3) a statement of the suspected cause of death of the decedent;

(4) the names and telephone numbers of any known friends or relatives of the decedent;

(5) a description of any known property of the decedent, including the estimated value of the property; and

(6) a statement of whether the property is subject to loss, injury, waste, or misappropriation.

Sec. 455.007. ACCESS TO INFORMATION. (a) A public probate administrator who has made an investigation under Section 455.006 may present to the statutory probate court judge a statement of the known facts relating to a decedent with a request for permission to take possession or control of property of the decedent and further investigate the matter.

(b) On presentation of a statement under Subsection (a), a statutory probate court judge may issue an order authorizing the public probate administrator to take possession or control of property under this chapter. A public probate administrator may record the order in any county in which property subject to the order is located.

(c) On presentation of an order issued under this section, a financial institution, governmental or private agency, retirement fund administrator, insurance company, licensed securities dealer, or any other person shall perform the following without requiring a death certificate or letters of administration and without inquiring into the truth of the order:

(1) provide the public probate administrator complete information concerning property held in the name of the decedent referenced in the order, without charge, including the names and addresses of any beneficiaries and any evidence of a beneficiary designation; and

(2) grant the public probate administrator access to a safe deposit box rented in the name of the decedent referenced in the order, without charge, for the purpose of inspection and removal of its contents.

(d) Costs and expenses incurred in drilling or forcing a safe deposit box open under Subsection (c) shall be paid by the decedent's estate.

Sec. 455.008. SMALL ESTATES. (a) If gross assets of an estate do not exceed 10 percent of the maximum amount authorized for a small estate affidavit under Section 205.001, the public probate administrator may act without issuance of letters testamentary or of administration if the court approves a statement of administration stating:

(1) the name and domicile of the decedent;

(2) the date and place of death of the decedent; and

(3) the name, address, and relationship of each known heir or devisee of the decedent.

(b) On approval of the statement of administration, the public probate administrator may:

(1) take possession of, collect, manage, and secure the personal property of the decedent;

(2) sell the decedent's personal property at private or public sale or auction, without a court order;

(3) distribute personal property to the estate's personal representative if one is appointed after the statement of administration is filed;

(4) distribute personal property to a distributee of the decedent who presents an affidavit complying with Chapter 205;

(5) sell or abandon perishable property of the

4-1 decedent if necessary to preserve the estate;

4-2 (6) make necessary funeral arrangements for the
4-3 decedent and pay reasonable funeral charges with estate assets;

4-4 (7) distribute to a minor heir or devisee for whom a
4-5 guardian has not been appointed the share of an intestate estate or
4-6 a devise to which the heir or devisee is entitled; and

4-7 (8) distribute allowances and exempt property as
4-8 provided by this title.

4-9 (c) On the distribution of property and internment of the
4-10 decedent under this section, the public probate administrator shall
4-11 file with the clerk an affidavit, to be approved by the court,
4-12 detailing:

4-13 (1) the property collected;

4-14 (2) the property's distribution;

4-15 (3) the cost of internment; and

4-16 (4) the place of internment.

4-17 Sec. 455.009. SMALL ESTATE AFFIDAVIT. (a) If gross assets
4-18 of an estate do not exceed the maximum amount authorized for a small
4-19 estate affidavit under Section 205.001, the public probate
4-20 administrator may file an affidavit that complies with Chapter 205
4-21 for approval by the statutory probate court judge.

4-22 (b) If the statutory probate court judge approves the
4-23 affidavit, the affidavit:

4-24 (1) must be maintained or recorded as provided by
4-25 Section 205.005; and

4-26 (2) has the effect described by Section 205.007.

4-27 Sec. 455.010. GRANT OF ADMINISTRATION. (a) A public
4-28 probate administrator shall file an application for letters of
4-29 administration or administration with will annexed as provided by
4-30 this title:

4-31 (1) if gross assets of an estate exceed the maximum
4-32 amount authorized for a small estate affidavit under Section
4-33 205.001;

4-34 (2) if the property of the decedent cannot be disposed
4-35 of using other methods detailed in this chapter; or

4-36 (3) at the discretion of the public probate
4-37 administrator or on order of the statutory probate court judge.

4-38 (b) After issuance of letters of administration, the public
4-39 probate administrator is considered a personal representative
4-40 under this title and has all of the powers and duties of a personal
4-41 representative under this title.

4-42 Sec. 455.011. WITHDRAWAL OF PUBLIC PROBATE ADMINISTRATOR
4-43 AND APPOINTMENT OF SUCCESSOR. (a) If a public probate
4-44 administrator has taken any action under Section 455.008, 455.009,
4-45 or 455.010 and a qualified person more entitled to serve as a
4-46 personal representative under Section 304.001 comes forward or a
4-47 will of a decedent is found naming an executor, the public probate
4-48 administrator may surrender the administration of the estate and
4-49 the assets of the estate to the person once the person has qualified
4-50 under this title.

4-51 (b) Before surrendering the administration of the estate,
4-52 the public probate administrator must file a verified affidavit
4-53 that shows fully and in detail:

4-54 (1) the condition of the estate;

4-55 (2) the charges and claims that have been approved or
4-56 established by suit or that have been rejected and may be
4-57 established later;

4-58 (3) the amount of each claim that has been rejected and
4-59 may be established later;

4-60 (4) the property of the estate in the administrator's
4-61 possession; and

4-62 (5) any other facts that are necessary in determining
4-63 the condition of the estate.

4-64 (c) The court may require any other filing from the public
4-65 probate administrator that the court considers appropriate to fully
4-66 show the condition of the estate before surrendering the estate
4-67 under this section.

4-68 Sec. 455.012. DEPOSIT OF FUNDS INTO THE COUNTY TREASURY.
4-69 The public probate administrator shall deposit all funds coming

into the custody of the administrator in the county treasury. Funds deposited must be dispersed at the direction of the public probate administrator and according to the guidelines of the county treasurer or auditor.

SECTION 3. Section 304.001(a), Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) The court shall grant letters testamentary or of administration to persons qualified to act, in the following order:

- (1) the person named as executor in the decedent's will;
- (2) the decedent's surviving spouse;
- (3) the principal devisee of the decedent;
- (4) any devisee of the decedent;
- (5) the next of kin of the decedent;
- (6) a creditor of the decedent;
- (7) any person of good character residing in the county who applies for the letters; ~~and~~
- (8) any other person who is not disqualified under Section 304.003; and
- (9) any appointed public probate administrator.

SECTION 4. Section 118.052, Local Government Code, is amended to read as follows:

Sec. 118.052. FEE SCHEDULE. Each clerk of a county court shall collect the following fees for services rendered to any person:

- (1) CIVIL COURT ACTIONS
 - (A) Filing of Original Action (Sec. 118.053):
 - (i) Garnishment after judgment . . . \$15.00
 - (ii) All others . . . \$40.00
 - (B) Filing of Action Other than Original (Sec. 118.054) . . . \$30.00
 - (C) Services Rendered After Judgment in Original Action (Sec. 118.0545):
 - (i) Abstract of judgment . . . \$ 5.00
 - (ii) Execution, order of sale, writ, or other process . . . \$ 5.00
- (2) PROBATE COURT ACTIONS
 - (A) Probate Original Action (Sec. 118.055):
 - (i) Probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment of title . . . \$40.00
 - (ii) Community survivors . . . \$40.00
 - (iii) Small estates . . . \$40.00
 - (iv) Declarations of heirship . . . \$40.00
 - (v) Mental health or chemical dependency services . . . \$40.00
 - (vi) Additional, special fee (Sec. 118.064) . . . \$ 5.00
 - (B) Services in Pending Probate Action (Sec. 118.056):
 - (i) Filing an inventory and appraisement as provided by Section 118.056(d) . . . \$25.00
 - (ii) Approving and recording bond . . . \$ 3.00
 - (iii) Administering oath . . . \$ 2.00
 - (iv) Filing annual or final account of estate . . . \$25.00
 - (v) Filing application for sale of real or personal property . . . \$25.00
 - (vi) Filing annual or final report of guardian of a person . . . \$10.00
 - (vii) Filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisement or after the 120th day after the date of the initial filing of the action, whichever occurs first, if more than 25 pages . . . \$25.00
 - (C) Adverse Probate Action (Sec. 118.057) . . . \$40.00

6-1 (D) Claim Against Estate (Sec. 118.058) . . . \$
6-2 2.00
6-3 (E) Supplemental Court-Initiated Guardianship
6-4 Fee in Probate Original Actions and Adverse Probate Actions (Sec.
6-5 118.067) . . . \$20.00
6-6 (F) Supplemental Public Probate Administrator
6-7 Fee For Counties That Have Appointed a Public Probate Administrator
6-8 (Sec. 118.068) . . . \$10.00
6-9 (3) OTHER FEES
6-10 (A) Issuing Document (Sec. 118.059): original
6-11 document and one copy . . . \$ 4.00
6-12 each additional set of an original and one copy . . . \$ 4.00
6-13 (B) Certified Papers (Sec. 118.060): for the
6-14 clerk's certificate . . . \$ 5.00
6-15 plus a fee per page or part of a page of . . . \$ 1.00
6-16 (C) Noncertified Papers (Sec. 118.0605): for
6-17 each page or part of a page . . . \$ 1.00
6-18 (D) Letters Testamentary, Letter of
6-19 Guardianship, Letter of Administration, or Abstract of Judgment
6-20 (Sec. 118.061) . . . \$ 2.00
6-21 (E) Safekeeping of Wills (Sec. 118.062) . . . \$
6-22 5.00
6-23 (F) Mail Service of Process (Sec. 118.063) . . .
6-24 same as sheriff
6-25 (G) Records Management and Preservation Fee
6-26 . . . \$ 5.00
6-27 SECTION 5. Subchapter C, Chapter 118, Local Government
6-28 Code, is amended by adding Section 118.068 to read as follows:
6-29 Sec. 118.068. SUPPLEMENTAL PUBLIC PROBATE ADMINISTRATOR
6-30 FEE. (a) The "supplemental public probate administrator fee" under
6-31 Section 118.052(2)(F) is for the support of the office of public
6-32 probate administrator under Chapter 455, Estates Code. Fees
6-33 collected under Section 118.052(2)(F) shall be deposited in the
6-34 county treasury to fund the expenses of the public probate
6-35 administrator's office.
6-36 (b) The supplemental public probate administrator fee is
6-37 charged for:
6-38 (1) a probate original action described by Section
6-39 118.055 and for which a fee is charged in accordance with Section
6-40 118.052(2)(A)(i), (ii), (iii), (iv), or (v); and
6-41 (2) an adverse probate action described by Section
6-42 118.057 and for which a fee is charged in accordance with Section
6-43 118.052(2)(C).
6-44 (c) The supplemental public probate administrator fee must
6-45 be paid by the person against whom the fee for a probate original
6-46 action or adverse probate action, as applicable, is charged and is
6-47 due at the time that fee is due.
6-48 (d) The supplemental public probate administrator fee is in
6-49 addition to all other fees charged in probate original actions and
6-50 adverse probate actions.
6-51 SECTION 6. Subchapter E, Chapter 101, Government Code, is
6-52 amended by adding Section 101.08145 to read as follows:
6-53 Sec. 101.08145. ADDITIONAL STATUTORY COUNTY COURT FEES AND
6-54 COSTS: LOCAL GOVERNMENT CODE. The clerk of a statutory county court
6-55 shall collect a supplemental public probate administrator fee of
6-56 \$10 under Sections 118.052 and 118.068, Local Government Code.
6-57 SECTION 7. Subchapter F, Chapter 101, Government Code, is
6-58 amended by adding Section 101.103 to read as follows:
6-59 Sec. 101.103. ADDITIONAL STATUTORY PROBATE COURT FEES AND
6-60 COSTS: LOCAL GOVERNMENT CODE. The clerk of a statutory probate
6-61 court shall collect a supplemental public probate administrator fee
6-62 of \$10 under Sections 118.052 and 118.068, Local Government Code.
6-63 SECTION 8. Subchapter G, Chapter 101, Government Code, is
6-64 amended by adding Section 101.12145 to read as follows:
6-65 Sec. 101.12145. ADDITIONAL COUNTY COURT FEES AND COSTS:
6-66 LOCAL GOVERNMENT CODE. The clerk of a county court shall collect a
6-67 supplemental public probate administrator fee of \$10 under Sections
6-68 118.052 and 118.068, Local Government Code.

7-1 SECTION 9. This Act takes effect January 1, 2014.

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